



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-2900 FAX (603) 271-2456



Michael Gaudette
d/b/a Gaudette's Septic Service
West Side Road
Bartlett, NH 03845

ADMINISTRATIVE ORDER
No. WMD 02-20

September 27, 2002

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Waste Management Division to Michael Gaudette d/b/a Gaudette's Septic Service pursuant to RSA 149-M:15, I. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH 03301.
2. Michael Gaudette is an individual doing business as Gaudette's Septic Service and having a mailing address of West Side Road, Bartlett, NH 03845.

C. STATEMENTS OF FACTS AND LAW

1. RSA 149-M authorizes DES to regulate the management of solid waste in the State of New Hampshire. RSA 149-M:7 authorizes the Commissioner of DES to adopt rules to implement solid waste management standards. Pursuant to this authority, the Commissioner has adopted Env-Wm 100-300 and Env-Wm 2100-3700 ("Solid Waste Rules").
2. Michael Gaudette is the owner of land located at West Side Road, Bartlett, NH, more particularly described in a deed recorded in the Carroll County Registry of Deeds at Book 1660, Page 376, and identified on Bartlett Tax Map 6 WSTSD-80, as Lot L03 (the "Site").
3. On May 22, 2001, DES personnel received a complaint alleging that a construction and demolition debris landfill was being operated at the Site.
4. On May 22, 2001, DES personnel from the Subsurface bureau observed construction and demolition debris being buried at the Site.
5. On May 29, 2001, DES personnel investigated the allegation of illegal disposal of solid waste at the Site.

6. RSA 149-M:4, XXII defines "solid waste" as "any matter consisting of putrescible material, refuse, residue from an air pollution control facility, and other discarded or abandoned material."

7. RSA 149-M:4, XXI defines "refuse" in part, as "any waste product ... which is composed wholly or partly of such materials as ... brick, plaster or other waste resulting from the demolition, alteration, or construction of buildings or structures; or accumulated waste material, cans, containers, tires, junk, or other such substances which may become a nuisance."

8. Env-Wm 102.42 defines "construction and demolition debris" in part, as "non-putrescible waste building materials and rubble which is solid waste resulting from the construction, remodeling, repair or demolition of structures or roads. The term includes but is not limited to, bricks, concrete and other masonry materials, wood, wall coverings, plaster, dry wall, plumbing, fixtures, non-asbestos insulation or roofing shingles, asphaltic pavement, glass, plastics that are not sealed in a manner that conceals other wastes and electrical wiring and components, incidental to any of the above and containing no hazardous liquid or metals. The term does not include asbestos waste, garbage, corrugated container board, electrical fixtures containing hazardous liquids such as fluorescent light ballasts or transformers, furniture, appliances, tires, drums and containers, and fuel tanks."

9. During the May 29 inspection, DES personnel observed an area adjacent to West Side Road being filled in. DES personnel also observed plastic and metal visible on the face of the fill.

10. On July 3, 2001, DES personnel met with Mr. Gaudette. Mr. Gaudette stated that three to four one ton truck loads of material had been dumped at the Site. The material consisted of dry wall and plastic. Mr. Gaudette could not recall the name of the company/individual who brought the material to the Site.

11. The plastic and metal observed by DES personnel at the Site are solid waste as defined by RSA 149-M:4, XXII. The dry wall Mr. Gaudette admitted was dumped at the Site is also a solid waste as defined by RSA 149-M:4, XXII.

12. RSA 149-M:4, IX defines a "[solid waste] facility" as "a location, system, or physical structure for the collection, separation, storage, transfer, processing, treatment or disposal of solid waste."

3. The Site constitutes a "solid waste facility" as defined by RSA 149-M:4, IX

14. Env-Wm 102.116 defines "owner" as "a person who owns a facility or part of a [solid waste] facility."

15. Michael Gaudette is the owner of a solid waste facility.

16. RSA 149-M:9, I states that "No person shall construct, operate or initiate closure of a public or private facility without first obtaining a permit from [DES]."

17. A review of DES files show that Michael Gaudette has not applied for or holds a permit to operate a solid waste facility at any New Hampshire location.

18. During the July 3 inspection, DES personnel advised Mr. Gaudette that the solid waste must be removed and disposed of at a permitted solid waste facility.
19. On July 26, 2001, DES personnel issued Letter of Deficiency No. WMD 01-16 ("LOD") Michael Gaudette.
20. The LOD advised Mr. Gaudette to cease operating an unpermitted solid waste facility, to remove all solid waste at the Site by August 20, 2001, and to submit a written report and copies of disposal receipts to DES by August 24, 2001.
21. As of the date of this Order, Mr. Gaudette has not addressed any of the items noted in the LOD.
22. On June 26, 2002, DES personnel conducted a follow-up inspection of the Site. The fill area did not have any visible solid waste and clean fill had been deposited in the area.
23. On July 12, 2002, DES personnel conducted a follow-up inspection of the Site. DES personnel observed that a dirt road near the existing drive way being constructed. DES personnel observed weathered dry wall, metal, and other miscellaneous solid waste to the right of the new road.
24. On August 15, 2002, DES personnel conducted a follow-up inspection of the Site. There was no indication to DES personnel that solid waste had been removed from the Site.

D. DETERMINATION OF VIOLATIONS

1. Michael Gaudette d/b/a Gaudette's Septic Service has violated RSA 149-M:9, I by operating an unpermitted solid waste facility.

E. ORDER

Based on the above findings, DES hereby orders Michael Gaudette d/b/a Gaudette's Septic Service as follows:

1. **Immediately** cease operating an unpermitted solid waste facility (ie. accepting any solid waste at the Site).
2. **By October 4, 2002**, contact Michael Galuszka at (603) 466-5389 to arrange for test pits to be dug by the property owner or a contractor.
3. **By November 1, 2002**, remove all solid waste from the Site and dispose of it at a permitted solid waste facility.
4. Submit one written status report to DES **by November 12, 2002**, certifying that corrective measures have been implemented and compliance achieved. Include in the report supporting documentation describing those measures taken to achieve compliance, **including copies of disposal receipts**.

5. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Michael Galuszka, Waste Management Specialist
Department of Environmental Services
80 Glen Road
Gorham, NH 03581
Fax: (603) 466-5148
e-mail: mgaluszka@des.state.nh.us


F. APPEAL

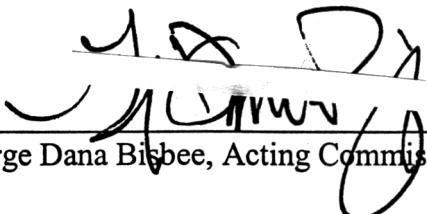
Any person aggrieved by this Order may appeal the Order to the Waste Management Council by filing an appeal that meets the requirements specified in Env-WMC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Michael Gaudette d/b/a Gaudette's Septic Service of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 149-M provides for civil and criminal penalties and administrative fines for violations of the statute or any rule adopted by DES relative to the statute, as well as for violations of this Order. RSA 149-M:15 provides for civil forfeitures of up to \$25,000 for each day of a continuing violation, in addition to enforcement by injunctive relief. In the event that compliance is not achieved, DES may take further action against Michael Gaudette d/b/a Gaudette's Septic Service, including referring the matter to the New Hampshire Department of Justice for imposition of civil or criminal penalties. DES reserves the right to pursue administrative penalties for the violations noted above.

This Order is being recorded in the Carroll County Registry of Deeds so as to run with the land.


Philip J. O'Brien, Ph.D., Director
Waste Management Division


George Dana Bisbee, Acting Commissioner

Certified Mail/RRR: 7000 1670 0000 0584 4059

cc File/DB
 Gretchen Rule, DES Legal Unit
 Public Information Officer, DES PIC Office
 Jennifer Patterson, Sr. Assistant Attorney General
 Town of Bartlett
 Carroll County Registry of Deeds